IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 301 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAJESHGIRI GURU DHANNJIGIRI BAVAJI ALIAS LAKHUBHA
- Appellant
Versus
STATE OF GUJARAT - Opponent

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Appearance :

MR BB NAIK for Appellant.
MR RC KODEKAR, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/09/2006

ORAL JUDGMENT

(**Per : HONOURABLE MR. JUSTICE K. A. PUJ**)

1. The present appeal is filed by the appellant-original accused No. 1 who was convicted under Section- 15 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (hereinafter referred to as “the Act”) and was ordered to suffer rigorous imprisonment for a period of 10 years and fine of Rs. 1 Lacs and in default thereof, to undergo further R.I of one year.

2. The case of the prosecution is that the first informant, Assistant Sub Inspector, Kiritsinh Tapubha Jadeja, and police constable, Bhimjibhai Lakhubhai Chavda, Buckle No. 1828, were on duty at Samakhiyali Bus stand on 19th

February 1999. At that time, at around 7.30 p.m. accused No. 1 was standing with two carry-bags near Samakhiyali Bus stand towards Laliyana village bus-stand. On suspicion, two panchas were called, namely, Mohanbhai Kumbha and Rudabhai Jivabhai and in presence of the panchas, the Assistant Sub-Inspector inquired with accused No. 1 about his identity and, thereupon, accused No. 1 said that his name is Rajeshgiri Guru Dhananjaygiri Bavaji alias Lakhubha Rajamalji Vaghela. Thereupon, A.S.I. told accused No. 1 that two bags which were there were to be searched and also offered accused No. 1 that he could search A.S.I. and panchas. Thereupon, accused No. 1 refused to search the A.S.I. and Panchas. Thereafter, first informant, in presence of panchas, searched both the bags and, on carrying out the search, on opening chain of black colour bag, poppy straw were found in the same and, thereafter, second bag of green colour was also searched and on the said bag, there was label of Maharaja tea and, after the search and after opening the chain, the first informant found poppy straw in the said bag also. Thereupon, the first informant inquired with accused No. 1 that whether he was having any license or

permit to keep poppy straw and accused No. 1 said that he was not having any such license or permit. Thereupon, the first informant directed police constable, Bhimjibhai, to bring seal box as the contraband articles were to be seized and also directed him to bring scale for weighing contraband articles. Within a short time, police constable, Bhimjibhai came back with seal box and scale. The weight of poppy straw in black bag was done which was weighing 12 Kg. and, out of the said quantity of contraband, sample of 100 grams was taken and the same was placed in a plastic bag and was sealed and slip containing signatures of two panchas and the first informant was stitched on the said plastic bag. The remaining quantity of contraband articles was kept in the same bag and after fastening the chain, the same was also sealed and slip containing signatures of two panchas and the first informant was stitched on the said bag. Similarly, the contraband articles in green bag was weighed and it was weighing 10 Kg. and, out of the said quantity of contraband, sample of 100 grams was taken and the same was placed in a plastic bag and was sealed and slip containing signatures of two panchas and the first informant was stitched on the said plastic bag. The

remaining quantity of contraband articles were kept in the same bag and after fastening the chain, the same was also sealed and slip containing signatures of two panchas and the first informant was stitched on the said bag. On all the articles, the seal of the P.S.I., Adhoi Police Station, was applied. Thereafter, search of the person of accused No. 1 was carried out and Rs. 1,000/- were found from the pocket of jacket put on by accused No. 1 being nine notes of Rs. 100 denomination and two notes of Rs. 50 denomination. The said currency notes were also seized and were put in plastic bag which was sealed with the seal of Police Sub Inspector, Adhoi Police Station, and the slip containing signatures of panchas and the first informant was stitched in the said plastic bag. After completing panchnama, the first informant arrested accused No. 1 and, thereafter, the first informant proceeded to Adhoi Police Station with contraband articles and accused No. 1. After reaching Adhoi Police Station, the first informant lodged a written complaint with the police station officer of Adhoi Police Station against accused No. 1 and, thereafter, investigation was started by Police Sub Inspector of Adhoi Police Station. During investigation, the I.O.

received information from accused No. 1 that the said contraband articles were purchased by accused No. 1 from accused No. 2 and, therefore, accused No. 2 was also arrested.

3. Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded. Based on the F.S.L. Report, since sufficient incriminating evidence was found against the accused, he was charge-sheeted in the Court of learned Special Judge, Gandhidham. The learned Special Judge, Gandhidham framed charge against the accused for commission of the offence punishable under Section 8(c) read with Section 21 of the Act.

4. The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned Special Judge, Gandhidham in Special Case No. 41 of 1999.

5. To prove the culpability of the accused, prosecution has in all examined as many as 15 witnesses. Prosecution has

also produced several documents and relied upon the contents of the same. After recording of the evidence of the prosecution witnesses was over, the learned Special Judge, Gandhidham explained the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated.

6. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Special Judge, Gandhidham has held that the prosecution has established beyond reasonable doubt that the charge levelled against the accused No. 1 was proved and, therefore, the accused No. 1 was held guilty of the offence punishable under Section 8(c) read with Section 21 of the Act. The learned Special Judge, Gandhidham has, however, acquitted the accused No. 2 from the charge levelled against him. The learned Special Jude, Gandhidham has, thereafter, heard the accused No. 1 and his advocate on sentence and looking to the gravity

of the offence committed by the accused No. 1 and looking to the circumstances, original accused No. 1 was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo R.I. of one year.

7. Being aggrieved and dissatisfied with the said judgment and order dated 28.01.2000, the present appeal is filed by the accused No. 1 before this Court under Section 374 of the Code of Criminal Procedure.

8. Mr. B.B. Naik, learned advocate appearing for the appellant – original accused No. 1 has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Special Judge, Gandhidham dated 28.01.2000. He has further submitted that the learned Special Judge has erred in convicting the appellant though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Special Judge, Gandhidham has failed to appreciate that the appellant is innocent and has not committed the alleged offence. The Panch witnesses have not

supported the case of the prosecution at all. Other independent witnesses have also not supported the case of the prosecution. Except the evidence of police witnesses, there is no iota of evidence on the record of the case. The conviction in such a serious offence and the awarding of sentence of 10 years rigorous imprisonment and fine of Rs. 1 Lac on the basis of evidence of the witnesses of police personnel only is not proper, legal and valid and, therefore, the impugned judgment and order is required to be quashed and set aside.

9. Mr. Naik has further submitted that while convicting the appellant – accused, the learned Special Judge has not considered the submissions made on behalf of the appellant – accused in their proper perspective and has wrongly erred in coming to the conclusion that the conviction can be based only on the evidence of the witnesses belonging to the police department. If no independent witness is available at the relevant time, then one can understand that there cannot be evidence of independent witnesses and the evidence can be of the officers investigating the case and, in such

circumstances, their evidence can be accepted in a given case. However, in the present case, independent witnesses were available during investigation, their statements have been recorded and panchnama was prepared in the presence of two independent panch witnesses, and if those witnesses are not supporting the case of the prosecution in their deposition before the Court, then, in such circumstances, the conviction cannot be made only by relying upon evidence of the witnesses belonging to the police department. He has further submitted that the law is well settled on this point by various judgments of the Hon'ble Supreme Court as well as this Court and the learned Special Judge has not taken into consideration the principles laid down in those judgments.

10. Mr. Naik has further submitted that the learned Special Judge has erred in coming to the conclusion that the provisions of Section 50 of the NDPS Act are not applicable to the facts and circumstances of the case. From the evidence of I.O., it is very clear that he was on petrolling duty. It is also very pertinent to note that they were keeping a watch at a particular place, where the

accused was found by them as per their say. He has, therefore, submitted that in such circumstances provisions of Section 50 are applicable and if there is violation of Section 50 of the Act, the prosecution is vitiated and no conviction can be recorded in the case. He has further submitted that there is contradictory version regarding compliance of Section 50 of the Act at the time of taking search of the accused. In the first information report lodged by the I.O., ASI Kiritsinh Tapubha Jadeja, there is no mention of compliance of Section 50 of the NDPS Act. However subsequently, in the deposition before the Court, he has stated something about the same. The Panch witnesses who were present at the time of search and seizure and in whose presence search and seizure was said to have been taken place, have not supported the say of the I.O. in this behalf. He has, therefore, submitted that there was no compliance of section 50 of the Act and, therefore, the impugned judgment and order convicting the accused No. 1 is required to be quashed and set aside.

11. Mr. Naik has further submitted that the basis of the prosecution case is seizure of contraband articles from

the possession of the accused. As per the say of the prosecution, poppy straw were seized from two bags carried by the appellant in presence of two panch witnesses. The fact of seizure as per the panchnama is not supported by two independent panch witnesses. In such circumstances, seizure of contraband articles from the accused was not proved beyond reasonable doubt and, therefore, merely by relying upon evidence of police officer, no conviction can be recorded against the accused. He has further submitted that when the initiation of the case i.e. seizure of contraband articles is not proved beyond doubt, the learned Special Judge should not have convicted the accused for the offence punishable under Section 15 of the Act, and, therefore, the impugned judgment and order convicting the accused No. 1 is required to be quashed and set aside.

12. Mr. Naik has further submitted that there is no evidence produced by the prosecution to prove that two hand-bags from which contraband articles were found, belonged to the accused. As per the say of the I.O. also, two hand-bags were lying where the accused was standing when they approached the accused with two panch witnesses.

On reaching near the accused, they opened the said two bags and found contraband articles in the said two bags and, accordingly, seized the same as if the same belonged to the accused. This version of the prosecution is not supported by two panch witnesses who are independent witnesses. Apart from that, there is no material or evidence on the record of the case to prove that the said two hand bags were in possession of the accused and they were owned by the accused. In absence of any relevant and reliable evidence either on the record of the case, the learned Special Judge should not have convicted the accused for the offence punishable under Section 15 of the Act.

13. Mr. Naik has further submitted that in the present case, the immediate report of seizure of contraband articles was not made to the superior officer or nearest Magistrate. The superior officer i.e. Dy.S.P. was informed only when certificate for sending samples to the F.S.L. Was to be sent and no independent report was made to Dy.S.P. or D.S.P. Even no report was made to the nearest Magistrate in this behalf also, except sending copy of FIR which is required under the provisions of the

Code of Criminal Procedure. There is violation of the provisions of the Act and, therefore, the impugned judgment and order convicting the accused No. 1 is required to be quashed and set aside.

14. In support of his submission, Mr. Naik has relied on the decision of the Hon'ble Supreme Court in the case of **Thandi Ram V/s. State of Haryana, AIR 2000 S.C. 468** for the proposition that for non-compliance with provisions of Sections 55 & 57 of the Act, the order of conviction stands vitiated.

15. Mr. Naik has further relied on the decision of the Hon'ble Supreme Court in the case of **Sajan Abraham V/s. State of Kerala, (2001) 6 S.C.C. 692** for the proposition that even if the provisions contained in Section 57 are not mandatory, substantial compliance of the said provisions is required to be made.

16. Mr. Naik has further relied on the decision of the Hon'ble Supreme Court in the case of **State of Punjab V/s. Balkar Singh and another, (2004) 3 S.C.C. 582** for the proposition that for convicting the accused under

Section 15 of the Act, conscious possession of the prohibited substance is required to be established and if the prosecution fails to establish such conscious possession, the order convicting the accused is required to be quashed and set aside.

17. Mr. R.C. Kodekar, learned Additional Public Prosecutor, on the other hand has supported the order and judgment of the learned Special Judge, Gandhidham and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in Section 50 as well as 57 of the Act were violated. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in the case of **G Srinivas Goud vs. State of A.P., reported in (2005) 8 Supreme Court Cases 183** wherein, while dealing with the argument that the officer conducting the raid did not send copy of the information received by him which led to the search and seizure, to his immediate superior official as required under Section - 42(2) of the Act and that due to non-compliance with this provision, the case

of the prosecution must fail, the Court held, after discussing the case law on the subject, that there was no violation of this statutory provision. In this very judgment the Hon'ble Supreme Court has also dealt with the issue regarding non-examination of independent witnesses and held that the said plea is raised only with a view to throw doubt upon the recovery of the contraband drug. In the impugned judgment though the independent witnesses are there and they have turned hostile and panch witnesses have not supported the case of the prosecution, the evidence of police witnesses cannot be thrown over borad.

18. Mr. Kodekar has relied on the decision of the Hon'ble Supreme Court in the case of **State of Punjab V/s. Balbir Singh, (1994) 3 S.C.C. 299** wherein it is held that the provisions of Section 52 & 57 are by themselves not mandatory. These provisions contain certain procedural instructions for strict compliance by the Officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these Officers null and void and at the most it may affect the probative value of the evidence regarding

arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Therefore, it has to be shown that such non-compliance has caused prejudice and resulted in failure of justice.

19. Based on the aforesaid judgment, Mr. Kodekar has submitted that with regard to minor irregularities or discrepancies here and there which are of very negligible nature cannot affect the prosecution case about the recovery and seizure of the contraband articles. He has, therefore, submitted that the learned Special Judge, Gandhidham has discussed at length all the issues which are raised by the appellant-accused in the present appeal and after considering the same the learned Special Judge, Gandhidham has come to the right conclusion that there was no violation of any of the provisions of the Act. He has, therefore, submitted that the impugned order and judgment does not call for any interference by this Court while exercising its appellate jurisdiction.

20. We have considered the submissions advanced by Mr. B. B. Naik, learned advocate appearing for the appellant - original accused No. 1 and Mr. R.C. Kodekar, learned Additional Public Prosecutor, appearing for the State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Special Judge, Gandhidham convicting the accused and sentencing him for the R.I of 10 years and fine of Rs.1 lac and in default thereof, to undergo further R.I of one year.

21. In order to find out whether the prosecution has established the charge against the accused beyond reasonable doubt and whether the learned Special Judge has recorded a just and correct conclusion holding the accused No. 1 guilty, we may first advert to the oral testimony of the prosecution witnesses.

22.The case of the prosecution is only based upon the evidence of Police personnel and the learned Special Judge, Gandhidham has erred in convicting the accused No. 1 by relying upon the evidence of Police witnesses only who have not inspired the confidence of the Court. There are lot of inconsistencies and discrepancies in the deposition of P.W. No. 5, Kiritsinh Jadeja, Exh. 14 who has got FIR registered and was ASI and evidence of P.W. No. 6, Bhimjibhai Chavda, Exh. 17 who was a police constable at the relevant time and who was also present at the place of offence. As per the say of Bhimjibhai, in para 11, page 32 of the paper book, that the accused was standing near the bags and, therefore, he and Kiritsinh did not inquire about owner of the bags. It is further stated that there were about 50 persons standing at the bus stand. However, as per the say of Bhimjibhai, he went to Lakadia Outpost for bringing seal of Adhoi Police Station and the P.S.I. Of Adhoi Police Station was at Lakadia Outpost at 7.30 p.m. on the date of incident, whereas the Police Station Officer, Shri Basantilal Kamlaji, PW 14, Exh. 27, in his cross-examination, in paragraph 5 has stated that PSI Rawal of Adhoi Police Station was in Adhoi Police station at 7.35 p.m. and also

at 7.50 p.m. at Adhoi Police Station on the date of the incident. Thus, there are major contradictions of police witnesses which go to the root of the matter and the learned Special Judge has committed an error in convicting the appellant on the basis of such deposition of the police officers.

23. It is also found that most of the independent witnesses have not supported the case of the prosecution and when there are major contradictions, discrepancies and inconsistencies in the evidence of police witnesses, benefit of doubt arises in favour of the accused. P.W. 1 – Exh. 10 Mohanbhai Kumbha is the panch witness on the spot. He turned hostile and did not support the case of the prosecution. P.W. 2 – Exh. 11 Rudabhai Jivabhai is also the panch witness on the spot. He turned hostile and did not support the case of the prosecution. P.W. 3 – Exh. 12 Dhirajlal Naveri is Panch of identification of accused No. 2 by accused No. 1. He also turned hostile and did not support the case of the prosecution. P.W. 4 – Exh. 13 Chhaganbhai Luhar is also a Panch witness. He also turned hostile and did not support the case of the prosecution. P.W. 7 – Exh. 20 Ranchhodbhai Karamsi is

an independent witness and running a farsan stall near Samakhiyali Bus station and his scale and weights were used. He also turned hostile and did not support the case of the prosecution. P.W. 8 – Exh. 21 Karimbhai Bhimbhai is also an independent witness and preparing tea in a hotel near Samakhiyali Bus stand. He also turned hostile and did not support the case of the prosecution. P.W. 9 – Exh. 22 Dineshpuri Jerampuri is also an independent witness, running a fruit lorry near Samakhiyali bus stand. He also turned hostile and did not support the case of the prosecution. P.W. 10 – Exh. 23 Velpuri is also an independent witness. He also turned hostile and did not support the case of the prosecution. P.W. 11 – Exh. 24 Odhavji Gokaldas is also an independent witness, running pan-galla near Samakhiyali bus stand. He also turned hostile and did not support the case of the prosecution. P.W. 12 – Exh. 25 Amrutlal Hardasbhai is also an independent witness, selling poppy husk on license. He also turned hostile and did not support the case of the prosecution.

24. Thus, except the police witnesses, no other independent witnesses or panch witnesses have supported the case of

the prosecution and there are lot of contradictions and discrepancies in the deposition of the police witnesses.

25. On the evidence of aforesaid witnesses as well as material produced by the prosecution, it could hardly be established that the appellant – accused No. 1 has committed offence under Section 15 of the Act. Since the testimony of police witnesses is not found to be dependable, the learned Special Judge should not have given too much importance to the said evidence simply because they are police officers especially when lot of discrepancies and contradictions were found.

26. It is also pertinent to observe here that the provisions contained in Section 57 of the Act have not been complied with. Section 57 says that whenever any persons makes arrest or seizure, under this Act, he shall, within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. It is true that provisions contained in Section 57 of the Act are not mandatory in nature as per the decision of the Hon'ble Supreme Court in the case of **State of Punjab V/s.**

Balbir Singh, (1994) 3 S.C.C. 299. As stated earlier, these provisions contained certain procedural instructions for strict compliance by the officers. But if there is no strict compliance of any of these instructions that by itself cannot render the acts done by these Officers null and void and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. Here in the present case, even otherwise there is no sufficient material and in light of this, non-compliance of the provisions contained in Section 57 has caused prejudice and resulted in failure of justice. The Hon'ble Supreme Court has specifically stated in the said case that the Officers cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the Officers totally ignore the provisions, then that will adequately have an adverse effect on the prosecution case and the Courts have to appreciate the evidence on the merits of the case bearing this aspect in view.

27.Section 57 has again come up for consideration before the Hon'ble Supreme Court in the case of **Sajan Abraham V/s. State of Kerala, (2001) 6 S.C.C. 692** wherein the communication to the immediate superior had not been made in the form of a report by the officer who made the arrest and seizure, but the officer had sent the copies of the FIR along with other as records regarding arrest of the accused – appellant and seizure of the contraband articles were sent by the officer to his superior officer immediately after registering the said case. On these facts, the Hon'ble Supreme Court has held that all the necessary information to be submitted in a report was sent and this was treated to be sufficient compliance and mere absence of any such report cannot be said to have prejudiced the accused. The Court further held that Section 57 is not mandatory in nature and since sufficient compliance has been made, it would not vitiate the prosecution case and in this view of the matter, there was no violation of Section 57 of the Act. Here in the present case, sufficient compliance as envisaged by the Hon'ble Supreme Court has not been made and hence, there was violation of Section 57 of the Act.

28. In the case of **State of Punjab V/s. Balkar Singh and another, (2004) 3 S.C.C. 582** wherein the accused was alleged to have been found present at the place where about 100 bags of poppy were recovered. He was sitting on such bags and he has failed to give any satisfactory explanation for being present at that place. The Court has considered the question as to whether mere presence of the accused is enough to take the view that the accused was in conscious possession of prohibited substance. The Court held that mere being found to be present at the place where the poppy husk bags were found and the failure to give any satisfactory explanation for being so present did not prove that the accused persons were in possession of the said poppy husk bags. The Court further observed that the appellant should have conducted further investigation as to transportation of poppy husk bags to place of incident, owner of the poppy husk bags etc. to prove that the accused were really in possession of the said articles. The Court held that the prosecution has failed to discharge its obligation to prove the possession of the poppy husk by the respondents. Accordingly, the appeal filed by the State

against the acquittal order of the High Court was dismissed by the Hon'ble Supreme Court.

29. Here in the present case, it has come in evidence that the bag was lying near the accused No. 1 at the Bus stand. It was not in his possession and it has also come in evidence that the Police officers did not ask any question to many other persons who were standing at the bus stand. On these facts, it is difficult to link the accused with the commission of offence or it cannot be said that the accused was in conscious possession of the prohibited substance i.e. poppy straw.

30. In the case of **Thandi Ram V/s. State of Haryana, AIR 2000 S.C. 468**, it is held that despite the fact that no prejudice having been caused to the accused, non-compliance of the provisions contained in Sections 55 & 57 of the Act would certainly render the order of conviction as bad in law. The Court has also taken into consideration that the appellant – accused has already undergone sentence for nine years. Considering this, the Court has set aside the judgment of the High Court and allowed the appeal acquitting the appellant – accused

from the charge levelled against him. In the present case also, as held earlier, there is non-compliance of the provisions contained in Section 57 of the Act. The accused No. 1 has undergone the sentence of more than 7 years.

31. On close scrutiny of the evidence on record and considering the judicial pronouncements on the subject, we express our inability to confirm the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Special Judge, Gandhidham. We are not in agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence as according to us, the conclusion arrived at by the learned Special Judge, Gandhidham is not tenable at law looking to the facts and in the circumstances of the case.

32. In the above view of the matter, the appeal is allowed. The judgment and order dated 28.01.2000 passed in Special Case No. 41 of 1999 by the learned Special Judge, Gandhidham – Kutch is hereby quashed and set aside and the appellant – original accused No. 1 –

Rajeshgiri Guru Dhananjaygiri Bavaji @ Lakhubha Rajmalji Vaghela is acquitted of the charges levelled against him. The appellant – original accused No. 1 be set at liberty forthwith if his presence is not required in any other case. The amount of fine, if paid, be refunded to the appellant.

[A. M. KAPADIA, J.]

[K.A. PUJ, J.]

S*avariya*